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Proposed Attorneys for Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF OREGON

In re	)	Case Nos. 25-30484-pcm11 (Lead Case);
	)	25-30486-pcm11 (Jointly Administered)
Sherwood Hospitality Group, LLC and	)	
DVKOCR Tigard, LLC,	)	
	)	DEBTORS' MOTION FOR APPROVAL
Debtor-in-Possession.	)	OF ASSUMPTION OF HOTEL
	)	MANAGEMENT AGREEMENTS
	)	
	)	LBR 9013-1(b)(1) Parties: Resolute Road
	)	Hospitality
	)	
	)	
	)	
	)	

**NOTICE**

If you oppose the proposed course of action or relief sought in this Motion, you must file a written objection with the bankruptcy court no later than fourteen (14) days after the date listed in the certificate of service below. If you do not file an objection, the Court may grant this Motion without further notice or hearing. Your objection must set forth the specific grounds for objection and your relation to the case. The objection must be received by the clerk of court at 1050 SW 6th Avenue #700, Portland, OR 97204, by the deadline specified above or it may not be considered.

1 You must also serve the objection on Debtor, c/o Douglas R. Ricks, Sussman Shank LLP, 1000  
 2 SW Broadway, Suite 1400, Portland, OR 97205 (503) 277-1111, within that same time. If the  
 3 Court sets a hearing, you will receive a separate notice listing the hearing date, time, and other  
 4 relevant information.

## 6 MOTION

7 Debtors<sup>1</sup> Sherwood Hospitality Group, LLC (“**Sherwood Hospitality**”) and DVKOCR  
 8 Tigard, LLC (“**DVKOCR**”) (phonetic: dah vee kOr), individually and collectively, move this  
 9 Court for entry of an entry of an order, substantially in the form attached hereto as Exhibit 1, (the  
 10 “**Proposed Order**”) approving the assumption of the Debtors’ respective Hotel Management  
 11 Agreements with Resolution Road Hospitality, a Delaware limited liability company (“**RRH**”). In  
 12 support of the Motion, Debtor relies on the Declaration of Alkesh Patel in Support of Management  
 13 Motions (the “**Patel Dec.**”) and the Declaration of Stuart Ticknor in Support of the Motion (the  
 14 “**Ticknor Dec.**”). In further support of the Motion, the Debtors respectfully represent as follows:

## 15 JURISDICTION AND VENUE

16 1. On February 17, 2025 (the “**Petition Date**”), the Debtors filed voluntary petitions  
 17 under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). Pursuant to  
 18 sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate and manage their  
 19 properties as debtors-in-possession.

20 2. The United States Bankruptcy Court for the District of Oregon (the “**Court**”) has  
 21 jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this matter is a core proceeding within  
 22 the meaning of 28 U.S.C. § 157(b). Debtors confirm their consent to the Court’s entry of a final  
 23 order in connection with this motion (the “**Motion**”) to the extent that it is later determined that  
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25 <sup>1</sup> “**Debtors**” means collectively the two entities designated as a debtor in the above-captioned cases  
 26 (each a “**Debtor**”) that filed voluntary petitions for relief on February 17, 2025 in the United States  
 Bankruptcy Court for the District of Oregon.

the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409.

4. The statutory bases for the relief requested include sections 105(a) and 365 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) 6006 and 9014.

### FACTS RELEVANT TO THIS MOTION

5. Each of the Debtors is a real estate holding company with its primary asset being an interest in a parcel of real estate together with the structure(s) and improvements thereon. *See* Patel Dec., at ¶ 4.

6. Sherwood Hospitality owns a 60% interest in the real property with an address of 22000 SW Meinecke Parkway, Sherwood, Oregon 97140 (the “**Sherwood Property**”) upon which is situated a 73-room hotel branded as a Hampton Inn & Suites (the “**Sherwood Hotel**”). *Id.*

7. DVKOCR owns a 100% interest in the real property with an address of 11799 SW 69<sup>th</sup> Avenue, Tigard, Oregon 97223 (the “**Tigard Property**”) upon which is situated a 152-room hotel branded as a Hampton Inn & Suites (the “**Tigard Hotel**”)². *Id.*

8. Both the Sherwood Property and the Tigard Property are part of an asset management portfolio managed by Evergreen Hospitality Group, LLC (“**Evergreen**”). *Id.* at ¶ 5

9. While Evergreen provides back office and related asset-based services, it does not provide services for management of the Hotels. Moreover, neither Sherwood Hospitality nor DVKOCR have any employees whatsoever, including employees to operate the Hotels. *Id.*

10. Sherwood Hospitality and DVKOCR contracted with RRH to provide management and operational services in connection with the Hotels. This includes (a) supply of necessary employees to provide staffing at the Hotels, (b) collection of all room rates, taxes, and related

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² The Sherwood Hotel and the Tigard Hotel are collectively referred to as the **Hotels** in connection with this Motion.

remittances due to the Hotels from their respective guests, (c) payment of all operating expenses for the Hotels, including payroll expenses, and (d) establishment and maintenance of operating financial accounts to provide for receipt of income and expenditures for expenses related to operations of the Hotels. *Id.* at ¶ 6.

11. In consideration for the contracts with RRH, Sherwood Hospitality received the sum of \$200,000.00 for the Sherwood Hotel, and DVKOCR received the sum of \$300,000.00 for the Tigard Hotel. *Id.* at ¶ 9.

12. The agreements between the Debtors and RRH were memorialized in the form of Hotel Management Agreements, both dated November 1, 2023 (collectively the “**Hotel Management Agreements**”). A copy of the Hotel Management Agreement for the Sherwood Hotel is attached to the Patel Dec. as Exhibit A. A copy of the Hotel Management Agreement is attached to the Patel Dec. as Exhibit B.

13. In addition to the management duties of RRH and the consideration paid referenced above, the salient business terms of the Hotel Management Agreements are as follows:

- a. Term: Ten (10) years from the effective date of November 1, 2023;
- b. Fees: Base Fee of 3% of gross revenues; Incentive Fee of 5% of gross profit earned over the projected gross profit each year; Central Revenue Management Fee (\$2,000 per month (Sherwood Hotel), \$2,500 per month (Tigard Hotel)); Centralized Accounting Fee (\$1,000 per month (Sherwood Hotel), \$1,500 per month (Tigard Hotel));
- c. Capital Improvements: RRH to maintain and reserve funds for the repair and replacement of furniture, fixtures, and equipment; Any capital improvements in excess of such reserve are the responsibility of Sherwood Hospitality and DVKOCR; and
- d. Termination: May be terminated by either side; May also be terminated on account of a “Hotel Transfer” that includes a liquidated damages provision.

1 *See id.*, at Ex. A, B.

2 14. The Debtors have determined that in order to maintain the value of the Hotels and  
3 the respective estate's interest in the Sherwood Property and the Tigard Property, assumption of  
4 the Hotel Management Agreements with RRH are in the best interests of such estates and represent  
5 a prudent exercise of the Debtors' business judgment.

#### 6 **RELIEF REQUESTED**

7 15. By this Motion, the Debtors request (i) authority to assume the Hotel Management  
8 Agreements with RRH, (ii) that the court determine that no cure amounts are due under the Hotel  
9 Management Agreements, and (iii) other related relief as the court deems proper.

#### 10 **BASIS FOR RELIEF**

11 16. Pursuant to Bankruptcy Code section 365(a), a debtor may assume or reject any  
12 executory contract or unexpired lease of the debtor, subject to the court's approval. Bankruptcy  
13 Code section 365(b) requires the debtor to satisfy certain requirements at the time of assumption  
14 if a default exists under the executory contract or unexpired lease. *See* 11 U.S.C. § 365(b)  
15 (requiring a debtor to cure a default or provide adequate assurance that it will promptly cure such  
16 default, as a condition for the assumption of an executory contract or unexpired lease).  
17 Additionally, Bankruptcy Code section 105(a) provides that "[t]he Court may issue any order,  
18 process, or judgment that is necessary or appropriate to carry out the provisions of this title."

19 17. In deciding to assume or reject an executory contract, the estate's representative  
20 (i.e. the trustee or debtor-in-possession) is provided considerable discretion. Courts have applied  
21 a "business judgment" test in evaluating the decisions to assume an executory contract. *In re Astria*  
22 *Health*, 640 B.R. 758, 767 (Bankr. E.D. Wa. 2022) *citing* *Mission Prod. Hdls., Inc. v.*  
23 *Tempnology, LLC*, 587 U.S. 370, 139 S. Ct. 1652, 203 L. Ed.2d 876 (2019) (stating that the  
24 bankruptcy court will generally approve the debtor's choice to assume or reject a contract under  
25 the "deferential 'business judgment' rule"). A motion to assume an executory contract is a  
26 "summary proceeding" where the court provides a cursory review of the debtor's decision on the

1 contract in keeping with a proper exercise of business judgment. The court should “presume that  
 2 the debtor acted prudently, on an informed basis, in good faith, and in the honest belief that the  
 3 action taken was in the best interests of the bankruptcy estate.” *In re Pomona Valley Med. Grp.,*  
 4 *Inc.*, 476 B.R. 665, 670 (9th Cir. 2007). Generally, the court should not substitute its judgment for  
 5 that of the debtor unless the decision to assume is “so manifestly unreasonable that it could not be  
 6 based on sound business judgment, but only on bad faith, or whim or caprice.” *Id. quoting Lubrizol*  
 7 *Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985). In permitting an  
 8 assumption, the court also resolves any disputes regarding the cure of any default under the  
 9 contract to be assumed. *Astria Health*, 640 B.R. at 768. After satisfying the business judgment  
 10 determination and the amount of any cure, the court’s role is complete. *Id.*

11 18. The Debtors’ proposed assumption of the RRH Hotel Management Agreements is  
 12 a necessary component of continued operations of the Hotels and serves to ensure the values of  
 13 the Debtors’ estates are preserved. As noted above, the Debtors are without employees or other  
 14 resources that would be necessary to self-manage the operations of the Hotels. Loss of RRH’s  
 15 services would leave hotel reservations unfilled, hotel guests without services, and the Hotels  
 16 themselves without sufficient supervision and control. The Debtors are also satisfied that the  
 17 termination provisions of the respective Hotel Management Agreements are sufficient to safeguard  
 18 the interests of creditors and limit the estates’ exposure to potential administrative expense claims.  
 19 *See Patel Dec.*, at ¶ 10.

20 19. Pursuant to section 365(b)(1)(A), a debtor may not assume an executory contract  
 21 or unexpired lease unless, at the time of assumption, the debtor cures or provides adequate  
 22 assurance that the debtor will promptly cure any existing default. Further, pursuant to section  
 23 365(b)(1)(C), if a default is outstanding, a debtor seeking to assume an executory contract or  
 24 unexpired lease must provide adequate assurance of future performance under such contract or  
 25 lease.

20. The Debtors have reviewed their books and records along with the applicable provisions of the Hotel Management Agreements. Based on that review, the Debtors have determined that there are no outstanding defaults under the Hotel Management Agreements or either of them and, as a result, no monetary or non-monetary cure is owed to RRH in connection with the proposed assumption. *See* Patel Dec., at ¶ 11.

21. As the Debtors were current on their obligations, and consistent with section 365, the Debtors have continued performing their postpetition obligations under the Hotel Management Agreements with RRH. *See In re Cochise Coll. Park, Inc.*, 703 F.2d 1339, 1352 (9th Cir 1983) (“Until rejection, however, the executory contract continues in effort and the non-bankrupt party is not a creditor with a provable claim against the bankrupt estate.”). *See also In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008) (“The Code provisions permitting a debtor to accept or reject an executory contract do not alter the parties' contractual rights... Where, however, the parties' rights under the terms of their pre-petition agreement have not been altered or extinguished by operation of nonbankruptcy law, both parties remain subject to the contractual obligations...”). This includes the obligations related to reimbursable expenses presented to the Debtors by RRH in accordance with sections 3.6, 3.7, 4.1 and 4.2 of the respective Hotel Management Agreements. Specifically, postpetition, RRH presented the Debtors with a request to authorize funds for payroll expenses for RRH employees at the Hotels and paid by RRH as allowed under section 4.2 of the Hotel Management Agreement(s). *See* Ticknor Dec., at ¶ 4. Debtors authorized payment of this expense consistent with its postpetition obligations under the Hotel Management Agreements as it views such a claim arising when the request for funding is made by RRH under the Hotel Management Agreement rather than when such expense is incurred by RRH, as it was for payment of its own employees, including for a time period before the Petition Date.

22. RRH's fees under the Hotel Management Agreements are market-based on consistent, if not lower, than the ordinary fees charged by RRH for similar services provided to similarly sized hotels. *See* Ticknor Dec., at ¶ 3. RRH is owed fees for their services on the 5th of

1 each month based on the services provided in the month prior. For the fees to be paid on March 5,  
 2 2025, Debtors intend to pay the full amount of fees due under the HMA for February, 2025,  
 3 including amounts that accrued prepetition, only after entry of an order granting this Motion. RRH  
 4 provided prorated management fees for the period of February 1, 2025 to February 17, 2025 as  
 5 follows: Sherwood Hotel - \$4,415.14; Tigard Hotel - \$7,259.00. *Id.*, at ¶ 5.

#### 6 RESERVATION OF RIGHTS

7 23. Nothing contained herein is or should be construed as (a) an admission as to the  
 8 validity of any claim against the Debtors, (b) a waiver of the Debtors' right to dispute any claim  
 9 on any grounds, (c) a promise or a requirement to pay any claim, (d) an admission that any  
 10 particular claim is of a type specified or defined hereunder, (e) a request to reject any executory  
 11 contract or unexpired lease, or (f) a waiver of the Debtors' rights under the Bankruptcy Code or  
 12 any other applicable law. The Debtors further reserve all rights, claims, and defenses in respect of  
 13 the Hotel Management Agreements.

#### 14 CONCLUSION

15 WHEREFORE, the Debtors request entry of the Proposed Order, granting the relief  
 16 Requested herein and such other and further relief as is just and proper.

17 Dated this 28th day of February, 2025.

18 SUSSMAN SHANK LLP

19 By /s/ Douglas R. Ricks  
 20 Douglas R. Ricks, OSB No. 044026  
 21 Attorneys for Debtors  
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IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF OREGON

In re	)	Case No. 25-30484-pcm11
	)	(Joint Administration Pending)
Sherwood Hospitality Group, LLC	)	
	)	
Debtor-in-Possession.	)	
	)	
In re	)	Case No. 25-30486-pcm11
	)	(Joint Administration Pending)
DVKOCR Tigard, LLC	)	
	)	
Debtor-in-Possession.	)	<b>[PROPOSED]</b> ORDER APPROVING
	)	ASSUMPTION OF HOTEL
	)	MANAGEMENT AGREEMENTS

THIS MATTER came before the court on Debtors’ Motion for Approval of Assumption of Hotel Management Agreements (the “**Motion**”)<sup>1</sup>, pursuant to sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, authorizing and approving of the Debtors’ assumption of their Hotel Management Agreements with Resolute Road Hospitality; having considered the Motion and the Declarations of Alkesh Patel and Stuart Ticknor in support of the

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1 Motion; having determined that this court has jurisdiction over this matter pursuant to 28 U.S.C.  
2 §§ 157 and 1334; with proper and adequate notice of the Motion having been given; having  
3 determined that no other or further notice is necessary; having determined that the legal and factual  
4 bases set forth in the Motion establish just cause for the relief granted herein; and this court having  
5 determined that the relief sought in the Motion is in the best interests of the Debtors, their estates,  
6 their creditors, and other parties in interest;

7 IT IS HEREBY ORDERED THAT:

- 8 1. The Motion is granted as set forth herein.
- 9 2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, the Debtors’  
10 assumption of their respective Hotel Management Agreements with RRH is hereby authorized and  
11 approved. Debtors may pay the management fees due to RRH in the ordinary course, including  
12 amounts accrued through the Petition Date of \$4,415.14 for the Sherwood Hotel and \$7,259.00 for  
13 the Tigard Hotel.
- 14 3. The Hotel Management Agreements shall be deemed valid and binding and in  
15 full force and effect and assumed by the Debtors, and that no cure payments or other cure measures  
16 are necessary to allow this assumption, and that RRH is without basis to assert against the Debtors  
17 any defaults, breaches, or claims of pecuniary losses existing as of the Petition Date or as of the  
18 entry of this Order or by reason of entry of this Order.
- 19 4. The Debtors are authorized to execute and deliver all instruments and  
20 documents, and take such other actions as may be necessary or appropriate to implement and  
21 effectuate this Order.
- 22 5. Any provision in any Hotel Management Agreement that purports to declare a  
23 breach, default, or payment right on account of insolvency or financial condition of either Debtor,  
24 filing of a voluntary petition or otherwise commencing a case under the Bankruptcy Code, or the  
25 appointment of a trustee, receiver, or similar custodian or fiduciary is unenforceable and the Hotel  
26 Management Agreements remain in full force and effect. RRH may not terminate or declare any

1 default under the Hotel Management Agreements on account of the anti-*ipso facto* provisions  
2 under section 365(b)(2) of the Bankruptcy Code.

3 6. Notwithstanding the relief granted herein and any actions taken hereunder,  
4 nothing in the Motion or this Order shall: (i) constitute an admission as to the validity or priority  
5 of any claim against the Debtors; or (ii) constitute a waiver of the Debtors' rights to dispute any  
6 claim.

7 # # #

8 CERTIFICATION OF COMPLIANCE WITH LBR 9021-1(a)

9 I certify that I have complied with the requirements of LBR 9021-1(a); proposed order  
10 circulated with Motion.

11 PRESENTED BY:

12 SUSSMAN SHANK LLP

13 /s/ Douglas R. Ricks

14 Douglas R. Ricks, OSB No. 044026

15 dricks@sussmanshank.com

16 Attorneys for

17 c: ECF Participants

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CERTIFICATE OF SERVICE

I, Amy E. Sinclair declare as follows:

I am employed in the County of Multnomah, state of Oregon; I am over the age of eighteen years and am not a party to this action; my business address is 1000 SW Broadway, Suite 1400, Portland, Oregon 97205-3089, in said county and state.

I certify that on February 28, 2025, I served, via first class mail, a full and correct copy of the foregoing **MOTION FOR APPROVAL OF ASSUMPTION OF HOTEL MANAGEMENT AGREEMENTS**, to the parties of record, addressed as follows:

**See Attached Matrix**

I also certify that on February 28, 2025, I served the above-referenced document(s) on all ECF participants as indicated on the Court's CM/ECF system.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: February 28, 2025.

/s/ Amy E. Sinclair

Amy E. Sinclair, Paralegal

DOCUMENT1

Sherwood Hospitality Group, LLC  
Case No. 25-30484-pcm11  
DVKOCR Tigard, LLC  
Case No. 25-30486-pcm11

20 Largest Unsecured Creditors:  
(Duplicates have been omitted)

City Of Sherwood Utilities PO BOX 638 Sherwood, OR 97140-0638	Hallmark Financial Service P.O. BOX 610091 Dallas, TX 75261-0091	HD Supply Facilities Maintenance PO BOX 509058 San Diego, CA 92150-9058
Hilton Franchise 4649 Paysphere Cir Chicago, IL 60674	L-O Tigard Finance, LLC Attn: Chris Miller & Russell Munn 11777 San Vicente Blvd, Ste 900 Los Angeles, CA 90049	Pride Disposal Company P.O. BOX 820 Sherwood, OR 97140
Quore LLC PO BOX 6843 Carol Stream, IL 60197-6843	Star Junction 7226 Lee Deforest Dr Ste 200 Columbia, MD 21046	Sysco Portland Inc PO BOX 2210 Wilsonville, OR 97070
Vistar PO BOX 951080 Dallas, TX 75395-1080	Washington County 155 N 1ST AVE STE 130 MS8 Hillsboro, OR 97154	Vistar PO BOX 951080 Dallas, TX 75395-1080
Ascentium Pawnee 23970 Highway 59N Kingwood, TX 77339	Carver & Assoc 4177 Northeast Expressway Atlanta, GA 30340	City Of Tigard 13125 SW Hall BLVD Tigard, OR 97223
Lileni Lopez 15820 SE Alder St. Portland, OR 97233	Sagar/Omkar 2015 2nd Ave. Unit 2609 Seattle, WA 98121	Tualatin Valley Water Dist. 1850 SW 170TH AVE Beaverton, OR 97003

Secured Creditors:  
(Duplicates have been omitted)

David W. Criswell, Trustee  
L-O Sherwood Finance, LLC  
L-O Tigard Finance, LLC  
601 SW Second Ave Ste 2100  
Portland, OR 97204

L-O Sherwood Finance, LLC  
11777 San Vicente Blvd, Ste 900  
Los Angeles, CA 90049

L-O Tigard Finance, LLC  
Attn: Chris Miller & Russell  
Munn  
11777 San Vicente Blvd, Ste  
900  
Los Angeles, CA 90049

Washington County Tax Assessor  
155 N. First Avenue, Ste. 340  
Hillsboro, OR 97124

Washington County Property Tax  
155 N. First Ave., Ste. 130 MS 8  
Hillsboro, OR 97124

C T Corporation System as  
representative  
re: UCC 92712457  
330 N. Brand Blvd, Ste 700  
Glendale, CA 91203

C T Corporation System as  
representative  
re: UCC 92608981  
330 N. Brand Blvd, Ste 700  
Glendale, CA 91203

ODR  
ATTN: Bankruptcy Unit  
955 Center St NE  
Salem, OR 97301-2553

Tualatin Valley Water District  
Tom Hickmann, CEO  
1850 SW 170th Ave  
Beaverton, OR 97006

Other Notice:

Alkesh R. Patel  
Sherwood Hospitality Group, LLC  
DVKOCR Tigard, LLC  
12330 SE 5<sup>th</sup> St, 3<sup>rd</sup> Fl  
Vancouver, WA 98683

Hotel Management Services LLC  
dba Resolution Road Hospitality  
918 W Idaho St, Ste 200  
Boise, ID 83702